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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CHESWOLD INVESTMENTS
(GRAPES), LLC, a Delaware limited
liability company;

Plaintiff,

vs.

GRAPERY, INC., a California
corporation,

Defendants.

GRAPERY, INC., a California
corporation;

Counterclaimant,

vs.

CHESWOLD INVESTMENTS
(GRAPES), LLC, a Delaware limited
liability company;

Counterdefendant.

Case No. 2:18-cv-8490-DDP-MAA

PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15
16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, customer and pricing lists and
18 other valuable research, development, commercial, financial, technical and/or
19 proprietary information for which special protection from public disclosure and
20 from use for any purpose other than prosecution of this action is warranted. Such
21 confidential and proprietary materials and information consist of, among other
22 things, confidential business or financial information, information regarding
23 confidential business practices, or other confidential research, development, or
24 commercial information (including information implicating privacy rights of third
25 parties), information otherwise generally unavailable to the public, or which may
26 be privileged or otherwise protected from disclosure under state or federal statutes,
27 court rules, case decisions, or common law. Accordingly, to expedite the flow of
28 information, to facilitate the prompt resolution of disputes over confidentiality of

1 discovery materials, to adequately protect information the parties are entitled to
2 keep confidential, to ensure that the parties are permitted reasonable necessary uses
3 of such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that
7 nothing be so
8 designated without a good faith belief that it has been maintained in a confidential,
9 non-public manner, and there is good cause why it should not be part of the public
10 record of this case.

11 12 2. DEFINITIONS

13 2.1 Action: this pending federal lawsuit.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation
15 of information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
19 the Good Cause Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are produced
28 or generated in disclosures or responses to discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who has been retained by a Party or its counsel to serve
3 as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this Action.
5 House Counsel does not include Outside Counsel of Record or any other outside
6 counsel.

7 2.9 Non-Party: any natural person, partnership, corporation, association, or
8 other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a party
10 to this Action but are retained to represent or advise a party to this Action and have
11 appeared in this Action on behalf of that party or are affiliated with a law firm
12 which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers, directors,
14 employees, consultants, retained experts, and Outside Counsel of Record (and their
15 support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support
19 services (e.g., photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium)
21 and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
25 from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material. Any
7 use of Protected Material at trial shall be governed by the orders of the trial judge.
8 This Order does not govern the use of Protected Material at trial.

9
10 4. DURATION

11 Even after final disposition of this litigation, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs. Final disposition shall be
14 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
15 with or without prejudice; and (2) final judgment herein after the completion and
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
17 including the time limits for filing any motions or applications for extension of time
18 pursuant to applicable law.

19
20 5. DESIGNATING PROTECTED MATERIAL

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or Non-Party that designates information or items for protection under
23 this Order must take care to limit any such designation to specific material that
24 qualifies under the appropriate standards. The Designating Party must designate for
25 protection only those parts of material, documents, items, or oral or written
26 communications that qualify so that other portions of the material, documents,
27 items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber the case development process or to
4 impose unnecessary expenses and burdens on other parties) may expose the
5 Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the inapplicable designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
12 under this Order must be clearly so designated before the material is disclosed or
13 produced. Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix at a minimum, the legend
17 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
18 contains protected material. If only a portion or portions of the material on a page
19 qualifies for protection, the Producing Party also must clearly identify the protected
20 portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be
25 deemed "CONFIDENTIAL." After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine
27 which documents, or portions thereof, qualify for protection under this Order. Then,
28 before producing the specified documents, the Producing Party must affix the

1 “CONFIDENTIAL legend” to each page that contains Protected Material. If only
2 a portion or portions of the material on a page qualifies for protection, the Producing
3 Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party
6 identify the Disclosure or Discovery Material on the record, the material should be
7 identified as Confidential whenever possible; however, the Parties shall have 30
8 days after the court reporter has notified counsel that the deposition transcript has
9 been completed to make designations under this Order.

10 (c) for information produced in some form other than documentary
11 and for any other tangible items, that the Producing Party affix in a prominent place
12 on the exterior of the container or containers in which the information is stored the
13 legend “CONFIDENTIAL.” If only a portion or portions of the information
14 warrants protection, the Producing Party, to the extent practicable, shall identify the
15 protected portion(s).

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
17 failure to designate qualified information or items does not, standing alone, waive
18 the Designating Party’s right to secure protection under this Order for such
19 material. Upon timely correction of a designation, the Receiving Party must make
20 reasonable efforts to assure that the material is treated in accordance with the
21 provisions of this Order.

22 The Receiving Party shall treat such documents, things, information,
23 responses and testimony as Protected Material from the date such notice is received
24 in accordance with the provisions of this Order. The Receiving Party shall
25 reasonably cooperate to correct any disclosure to maintain the confidentiality of the
26 previously undesignated information, without prejudice. Within ten (10) days of
27 providing written notice that a document or documents was not designated
28 Protected Material under this provision, the Designating Party must provide the

1 Receiving Party with replacement copies of such documents containing the proper
2 designation. Upon receipt of such replacement copies, the Receiving Party shall
3 immediately destroy any copies of the unmarked or incorrectly marked documents,
4 things, information, responses, or testimony; except that the Receiving Party shall
5 not be obligated to destroy any mis-designated material that has become part of the
6 record of this litigation or of a deposition taken pursuant to this litigation.

7 8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
10 designation of confidentiality at any time that is consistent with the Court's
11 Scheduling Order.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
13 resolution process under Local Rule 37.1 et seq.

14 6.3 The burden of persuasion in any such challenge proceeding shall be on
15 the Designating Party. Frivolous challenges, and those made for an improper
16 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
17 parties) may expose the Challenging Party to sanctions. Unless the Designating
18 Party has waived or withdrawn the confidentiality designation, all parties shall
19 continue to afford the material in question the level of protection to which it is
20 entitled under the Producing Party's designation until the Court rules on the
21 challenge.

22 23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is
25 disclosed or produced by another Party or by a Non-Party in connection with this
26 Action only for prosecuting, defending, or attempting to settle this Action. Such
27 Protected Material may be disclosed only to the categories of persons and under the
28 conditions described in this Order. When the Action has been terminated, a

1 Receiving Party must comply with the provisions of section 13 below (FINAL
2 DISPOSITION). Protected Material must be stored and maintained by a Receiving
3 Party at a location and in a secure manner that ensures that access is limited to the
4 persons authorized under this Order.

5 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
6 otherwise ordered by the court or permitted in writing by the Designating Party, a
7 Receiving Party may disclose any information or item designated
8 “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
10 well as employees of said Outside Counsel of Record to whom it is reasonably
11 necessary to disclose the information for this Action;

12 (b) the officers, directors, and employees (including House Counsel)
13 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

14 (c) Experts (as defined in this Order) of the Receiving Party to whom
15 disclosure is reasonably necessary for this Action and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

19 (f) professional jury or trial consultants, mock jurors, and Professional
20 Vendors to whom disclosure is reasonably necessary for this Action and who have
21 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information
23 or a custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses and attorneys for witnesses, in
25 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
26 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
27 they will not be permitted to keep any confidential information unless they sign the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise

1 agreed by the Designating Party or ordered by the court. Pages of transcribed
2 deposition testimony or exhibits to depositions that reveal Protected Material may
3 be separately bound by the court reporter and may not be disclosed to anyone except
4 as permitted under this Stipulated Protective Order; and

5 (i) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7
8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
9 PRODUCED IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall include
18 a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected. If the
21 Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action
23 as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this Action
28 to disobey a lawful directive from another court.

1 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced by
4 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
5 information produced by Non-Parties in connection with this litigation is protected
6 by the remedies and relief provided by this Order. Nothing in these provisions
7 should be construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request,
9 to produce a Non-Party’s confidential information in its possession, and the Party
10 is subject to an agreement with the Non-Party not to produce the Non-Party’s
11 confidential information, then the Party shall:

12 (1) promptly notify in writing the Requesting Party and the Non-Party that
13 some or all of the information requested is subject to a confidentiality agreement
14 with a Non-Party;

15 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
16 Order in this Action, the relevant discovery request(s), and a reasonably specific
17 description of the information requested; and

18 (3) make the information requested available for inspection by the Non-
19 Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court
21 within 14 days of receiving the notice and accompanying information, the
22 Receiving Party may produce the Non-Party’s confidential information responsive
23 to the discovery request. If the Non-Party timely seeks a protective order, the
24 Receiving Party shall not produce any information in its possession or control that
25 is subject to the confidentiality agreement with the Non-Party before a
26 determination by the court. Absent a court order to the contrary, the Non-Party shall
27 bear the burden and expense of seeking protection in this court of its Protected
28 Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
6 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
7 or persons to whom unauthorized disclosures were made of all the terms of this
8 Order, and (d) request such person or persons to execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10
11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
12 OTHERWISE PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated
22 protective order submitted to the court.

23
24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in
2 this Stipulated Protective Order. Similarly, no Party waives any right to object on
3 any ground to use in evidence of any of the material covered by this Protective
4 Order.

5 12.3 Filing Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material
7 may only be filed under seal pursuant to a court order authorizing the sealing of
8 the specific Protected Material at issue. If a Party's request to file Protected
9 Material under seal is denied by the court, then the Receiving Party may file the
10 information in the public record unless otherwise instructed by the court.

11 12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in paragraph 4, within
14 60 days of a written request by the Designating Party, each Receiving Party must
15 return all Protected Material to the Producing Party or destroy such material. As
16 used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, the
19 Receiving Party must submit a written certification to the Producing Party (and, if
20 not the same person or entity, to the Designating Party) by the 60 day deadline that
21 (1) identifies (by category, where appropriate) all the Protected Material that was
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any
23 copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel
25 are entitled to retain an archival copy of all pleadings, motion papers, trial,
26 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
27 and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Protected Material. Any such archival


1 copies that contain or constitute Protected Material remain subject to this Protective
2 Order as set forth in Section 4 (DURATION).

3 14. Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

6
7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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10 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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12 DATED: May 7, 2019

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15 _____
16 Honorable Maria A. Audero
17 United States Magistrate Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on _____, 2019 in the case of *Cheswold Investments (Grapes) LLC v. Grapery,*
Inc., Case No. 2:18-cv-8490-DDP-MAA. I agree to comply with and to be bound
by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____